

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5505**

1. Opening of Meeting:

The Appeals Board convened at 10:30 p.m., May 4, 2009 in Sacramento, with Chair Garcia presiding.

2. Roll Call: Members

Present

Absent

Bonnie Garcia, Chair

x

George Plescia, Vice Chair

x (by phone)

Ann Richardson

x

Liz Figueroa

x

Cindy Montañez

x

Sharon Runner

x

3. Chair's Report:

Chair Garcia thanked the staff and the Board members for attending. We are moving towards the end of the fiscal year, and there are a lot of challenges in trying to spend down some of the moneys, identifying projects that are viable within this period, and also ensuring that we are identifying the right priorities for the next fiscal cycle of 2009/10. Chair Garcia has asked the Board and the staff to work closely on these issues over the last couple of weeks. Acting Executive Director Flagg has been working with the senior managers and the Board members have divided into separate subcommittees and identifying legal, legislative, financial and other areas where they need to take a closer look. Chair Garcia thanked them for their time and efforts, and stated that as they are working through the budget today they will identify some of those areas.

Member Figueroa commented that CUIAB has had some press again and she would like to make sure that the Board gets copies of any media coverage.

Acting Executive Director Flagg responded she would provide a link for all Board members.

4. Unfinished & New Business:

Budget

Acting Executive Director Flagg started with the presentation for the 2008/09 budget. She stated as mentioned to the Board at the last meeting, CUIAB has some funds left over at the end of this fiscal year. She stated that they shared that

information with the Board members and the Board asked staff to go back and see if there weren't any purchases or contracts that were needed that could be moved up from the 2009/10 fiscal year budget or from future expenses that they might be able to utilize this year. One of the considerations in putting together the 2008/09 budget, as well as 2009/10 fiscal year budget was the Governor's Emergency Proclamation for EDD and CUIAB with respect to the unemployment insurance and trying to help us help those people in California who are out of work. In order to be able to do that they have had to move quite rapidly, and the Chair in response has suspended the BAC committee and instead asked the Senior Staff to take full responsibility for financial matters. She stated the Chair has assigned two Board members to various subcommittees to try and tackle some of the issues that they are facing and those that will be coming up in future Board meetings with specificity as to each of those meetings. The feedback they have been getting from the Board members has been very helpful.

Mirella Gomez presented the budget report. With her presentation there were two supplemental documents: a summary provided by each branch manager (Attachment A), and a line-by-line summation (Attachment B) of what was presented in the PowerPoint (Attachment C) for the operating expenses and equipment.

Member Montañez questioned, regarding the reserve, if there were any statutes that limit the amount that can be on reserve or if we have a reserve do we lose any of that money. She asked if all reserve money gets lost so we have to spend it.

Acting Executive Director Flagg clarified that unspent money gets lost.

Member Montañez commented that then there is no such thing as having a reserve for future years should we need money.

Mirella Gomez responded no and that it does get returned to EDD.

Member Richardson asked if within the reserve and available balance of \$8 million, is the ALJ 4% COLA of \$1.3 million included?

Mirella Gomez responded it was.

Member Richardson questioned that we have that reserve but we don't believe that the ALJ's will receive a COLA this fiscal year.

Mirella Gomez replied that it is not coming up to be provided this fiscal year.

Member Richardson stated then essentially that money is off the table for us to spend.

Mirella Gomez responded no, that this is a reserve amount that was set aside in case the COLA went into effect this fiscal year so that money is available to us

because it is not going to go in. So far, what they have heard is the COLA will not be effective this fiscal year. So although they have put those funds into reserve now they are allocating it.

Member Richardson asked if the ALJ COLA does come up will we be short. If we do end up giving the ALJ COLA or awarding it retroactively we'll be short, correct.

Mirella Gomez stated that in that case we will need to budget it in 2009/10.

Member Richardson asked if we would be short in on July 1 because if before July 1 the COLAs are provided.

Mirella Gomez responded that is correct, if before July 1 this fiscal year, if it goes through within the next month and a half we will be short within this fiscal year. It is not projected to be spent, so that is where we either spend the money or lose it.

Member Richardson commented that our assumption is that it is not going to happen but if it does we will be short.

Mirella Gomez replied if it does this fiscal year. If it happens after July then that is when we need to go ahead and put it in our reserve balance once again.

Member Richardson thanked her for the explanation.

Chair Garcia commented that taking a look at that as well the over base earnings in the first quarter; we came in at 100%. She stated that at the last meeting, that first quarter, we were estimating 32% and we got funded at 100%. We ended up with that other half million and that is what is reflected there. Assuming that nothing changes potentially our second quarter, third and fourth are going to show up the same. Even if we got to July 1st, by then we would know what happens in our second quarter and potentially we could end up with a surplus there again.

Member Richardson clarified that first quarter is 100%, second quarter we're estimating 32% but we think it will probably be 100%.

Mirella Gomez stated that we do not know yet but that EDD has estimated 100% funding.

Member Richardson commented that that would take care of the shortage from the ALJ COLA.

Chief ALJ/Chief Executive Roldan asked if that reserve for the COLAs set aside for the whole fiscal year, to which Mirella Gomez answered affirmatively.

Chief ALJ/Chief Executive Roldan stated that there was an anticipation that if it occurred that that was a sufficient amount to pay a 4% increase to pay the whole fiscal year. So even if we had a situation, which seems unlikely, but if they said the

COLA is going to be awarded, it would likely be for a portion of the year even if they made it retroactive for a short period of time. For example, if they made it retroactive for only 3 months in this fiscal year there were still be sufficient money in this reserve to pay that COLA.

Mirella Gomez stated that is correct and that it was budgeted for the whole 2008/09 fiscal year.

Member Figueroa asked about the \$12,000 for Board educational workshop.

Acting Executive Director Flagg responded that they are going to be contracting with Dave Willis through CPS to conduct a workshop in June for the Board members and the senior staff on state budgeting 101, essentially walking them through the fiscal and the budget process so that they will have a better understanding of how the federal funds affect us and how we work and arrive at a budget.

Member Figueroa commented that we probably have people from EDD or the Governor's Office with them because they are making assumptions on how our moneys work, to give them an understanding as to why we are asking for all the exemptions.

Acting Executive Director Flagg responded that Dave Willis is the previous Executive Director at CUIAB and he actually has a finance background so he has firsthand knowledge of our process and our funding mechanism and working with the feds. Some of the staff is still here that actually worked for him previously.

Chair Garcia stated that with a new Chief in the Field, a new Chief coming in for Appellate, half the Board members are new, we are looking at 32% versus 100% funding, we're looking at workloads and we get financed by the feds, we have a fiduciary responsibility and we have an obligation to the public to make sure that we are delivering services in a way that is timely and that is effective, and only if we have the right information can we act responsibly. She stated that she asked the Acting Executive Director to help us so we are partnering with EDD. They are doing some things on their own as well and because we fall under their umbrella, sometimes we fall of the radar screen. She stated she thinks it is important and it's timely and she is not quite sure how they are going to work it out, whether it is going to be remotely for those who cannot come in but it is certainly an opportunity for all of us to learn.

Chair Garcia suggested that they go over the budget items page by page, starting with page 2. Regarding page 2, Board Member Montañez had raised the issue about how we are contracting out for services for electronic equipment, to see how we work under the emergency operations, with the Governor's Proclamation and what do we really need to be effective. One of the things we have found lacking is that the IT staff was not able to respond to all of the 12 field offices, to the Board's needs, effectively. Part of that is that they are operating in real time and we are

not, therefore, some of this equipment is to get them up to speed and available to all of us at all times. This was part of those expenditures that had to do with that. Chair Garcia stated that they also know that some of our equipment is outdated and they were replacing some of that.

Member Richardson inquired about an item on page 6, a new item that she had never seen before, for IT consultant services, \$35,000.

Acting Executive Director Flagg responded that rather than fast track in purchases that are IT related having to do with going paperless and a case management system, the staff suggested and agreed that it would behoove us to hire independent contractor which is something that EDD the Division of Workers Compensation did, to do a needs analysis and help us write the requirements for what we need.

Member Richardson asked if EDD was involved in this because obviously it would be extremely beneficial to marry our computer systems. Chair Garcia assured Member Richardson that EDD was involved.

Member Richardson asked about the consultant.

Acting Executive Director Flagg stated that it would shorten the life of what it is that we need to do, so we're going to fast track it. She stated that at one of the previous Board meetings in the presentation that she made at the time, Dale Jablonsky was Acting Chief Information Officer for the Labor Agency and the idea is when the Labor Agency is making purchasing decisions and contracting decisions that are IT related, they were looking at how leverage those things for all of boards, commissions and departments under the Labor Agency. This is one of those. The Division of Workers Compensation for example went paperless and did case management system, and we are looking at doing the same thing, so we are going to piggyback on what they have done. However, we have certain needs that are unique so we do need to have a needs analysis done and the requirements written. That is what the consultant service is for. If we can hire the consultants this year, we can actually get working on it. They are hoping that they can fast track the purchase of the case management system and going paperless and cut that time from three to four years down to one or two years.

Member Richardson inquired how EDD is involved with our IT consultants.

Acting Executive Director Flagg responded that we are piggybacking on what EDD has already in place.

Member Richardson stated she did not understand what piggybacking means. She asked if it meant we are working with them.

Rafael Placentia, CIO, explained that right now we are leveraging what EDD has in place now for using consultants. That one of the goals that the new AIO over at

EDD is to consolidate some of the efforts. So what they are planning on doing is leveraging their existing consultant systems that they actually use now.

Member Richardson asked if they had a consultant now.

Rafael Placentia, CIO, responded that they currently have several consultants working on different tasks.

Member Richardson asked if we were going to work with their consultants or work independently. She stated that piggyback means to her that we are on top of their systems but that her understanding may be wrong.

Rafael Placentia, CIO, replied we will be using the contracts that they have in place now and that it would be a per hour cost of how many billable hours we use for consultant services.

Member Richardson asked if EDD would bill CUIAB.

Rafael Placentia, CIO, responded no, that the contractor would bill CUIAB and we will pay the contractor directly, but it is under the umbrella of EDD and the Agency that we are using the consultants.

Chair Garcia explained that EDD deals with all of the incoming work and somewhere down the road we want to have our field offices send us the files remotely, so somehow with them redesigning their systems it needs to fit with our system. Beyond that we have to transfer it forward from field operations to here. As they were looking the IT needs here and Rafael Placentia identified some hardware and software that were needed, they questioned why are we going to spend more than a quarter million dollars on stuff that may not be able to talk to EDD computers. As we move to paperless we need to make sure that the ideas for EDD are compatible with our needs. We need to talk to the people that are talking to them so that we are on the same page and that we are not purchasing anything that a year from now might be obsolete or does not really meet our needs. Some of the things that Member Richardson has been working on, for example, the web-base program for the waiting rooms, it isn't only about buying televisions, because we should we be beaming this in from headquarters, so are we going to buy monitors or are we going to buy televisions, are we going to put in a CD Rom, or are we going to beam it in real time. They looked at their software and hardware capabilities and maybe they don't meet. We need to regroup, make sure we are buying and investing in the right type of equipment for paperless, for web base, and for customer service. They also identified the need to perhaps call claimants for their hearings. So do we have a system that can do phone calling and those kinds of things. EDD is moving towards some of that, we are moving toward some of that. so we might meet there in the middle. but some of it might be unique to us. That is why it is important to use the similar or same consultants but also identify our specific needs and have our own carve out so again we are not just under their umbrella.

Member Richardson asked how for how long the consultant services will be needed.

Rafael Placentia, CIO, responded that it depended upon the size of the project. Initially he estimated going from this fiscal year to the next, six months to give us an idea of where things are.

Member Richardson asked if it was \$35,000 for the six months.

Rafael Placentia, CIO, stated that that was strictly for a month of service.

Member Richardson asked if it was 6 x \$35,000.

Rafael Placentia responded about \$180 per hour working 8 hours a day for a month.

Member Richardson clarified about \$210,000 and that was just to start. She asked if this IT contract that they are undertaking will not jeopardize any existing service we have such as buying a backup system for all of our case files, because while they are analyzing what our needs are to go paperless we still have an existing system that needs to be maintained and backed up.

Rafael Placentia, CIO, responded that was correct and that none of the consultant time would be used for any of that type of work.

Member Richardson asked if someone from EDD would be working with us.

Rafael Placentia, CIO, stated that all of that work is ongoing and that they are working out the details.

Member Richardson commented that those are good ideas.

Chair Garcia stated that is why they are having this special meeting, because there is so much that was identified over a short period of time that if we lose the opportunity to capture the use of these dollars we lose opportunity maybe in the next fiscal year.

Member Richardson inquired about the IT expansion referred to on page 5 of the PowerPoint, asking if the \$385,000 includes the \$210,000 that is going to be spent on the consultant services.

Mirella Gomez responded that it was only for 2008/09.

Member Richardson asked when the consultant services would begin.

Mirella Gomez responded that we would be doing it this fiscal year and that this only captured the expense for this fiscal year.

Acting Executive Director Flagg commented that there will likely be another consultant service expense in the 2009/10 fiscal year budget.

Member Richardson asked if the \$25,000 was really accurate, and asked if they needed May and June.

Mirella Gomez responded that they are predicting they will be able to get the contract and all the details so that they can be hired on for a month, in June.

Chair Garcia commented that also it is by the hour so if they don't do the work they don't get paid.

Member Richardson referred to the NAUIAB attorneys, and asked who that was.

Chief ALJ/Chief Executive Roldan responded that this is referring to all CUIAB's ALJs, as NAUIAB offers a blanket membership for different states based on the size of the state. California, obviously being the largest in the union, we're at the top threshold, still a substantial discount rather than paying \$50 individual memberships for all of the new ALJs. There had been a decision in the past to not participate in the organization but from an education and information standpoint the materials received from NAUIAB will particularly helpful to all of the new ALJs.

Member Richardson asked if it was \$1,500 for all of the ALJs.

Chief ALJ/Chief Executive Roldan responded for every single ALJ no matter how many are brought onboard.

Acting Executive Director Flagg commented that she would like to remind the Board members that as was mentioned at a previous Board meeting, when it comes to serving on the NAUIAB board for anything related to policy-setting, it would be Board members that represent this organization at the conferences. So while we as an organization have membership, it is the Board members who are responsible for setting policy for the CUIAB.

Member Figueroa asked if there was enough money for the Chair or Vice Chair to attend if they wanted.

Acting Executive Director Flagg responded yes, and that CUIAB has a travel budget for both this fiscal year and next fiscal year.

Member Richardson commented that there would be a convention coming up soon. Member Figueroa asked Chair Garcia if she would be attending the convention.

Chair Garcia stated that she did not know what the dates were, but that she has had this discussion with the Chief and it seems to her that California is pretty much at the forefront of this issue and it is foolish not to be part of a national organization that can help us in terms of not reinventing the wheel. Other states have come up with programs that are effective and our staff should be participating and educating themselves as much as possible and it is a small price to pay for that kind of opportunity and access and for them as Board members to actively be working on the policy statements.

Member Figueroa commented that in the past many of the staff had made presentations and have been active participants in the program. She actively encourages that and would also encourage that the Chair and Vice Chair represent CUIAB at the board level.

Chair Garcia and Vice Chair Plescia agreed. Member Richardson concurred.

Chair Garcia thanked senior management staff and the Board members for diligently working on identifying all of the little items that will make a big difference.

Chair Garcia entertained a motion to adopt the budget as presented. The motion passed unanimously.

Workload Action Plans

Chief ALJ/Chief Executive Roldan reported that in terms of Phase One and Phase Two, a large chunk of addressing the massive increase of workload had been the absorbing of both ALJs and support staff into the agency to match workload as best as possible. The most recent observation had been with the Phase One hiring, in essence complete, but the Phase Two is well on its way. They are beginning to match and on occasion exceed the number of verifications coming into the agency, but it is clear based on the present numbers that we are not in a position yet with present staff, even with the adjustments that have been made in terms of mass calendars and people stepping up, and we are going to need to absorb additional staff into the organization. They have identified as an appropriate number for Phase Three hiring 60 additional ALJs and a proportionate number of support staff, that seems to work based on projections, but this just information so that the Board is aware that this is a proposed number. They do have a more concrete proposal in terms of actual workload that they are going to be able to wrestle down as they move forward, but that is what they are seeing as a major centerpiece of being able to finally and consistently exceed dispositions versus verifications. As has been discussed in the past, optimally we should be in a situation where at any given time there are between 35,000 and 40,000 open cases. The latest projects based on the calculations from PALJ Hugh Harrison show we are at slightly above 90,000 open cases in every category. Without having made the current adjustments we would have been well in excess of over

100,000 open cases. We have really staunched the bleeding, so to speak, but we need to start healing the wound of all these cases coming in and the best strategy is going to be bringing on more personnel.

Member Richardson commented that in the past PALJ Harrison has provided the Board with a workload report on the outstanding balances in the field, and asked if those could be provided to the Board again.

Chief ALJ/Chief Executive Roldan responded that they are being sent to the Board members on a regular basis, but because of circumstances he was unable to release the report to the Board, but will make sure that they receive it now.

Member Figueroa asked Chief ALJ/Chief Executive Roldan and Acting PALJ Carrillo if they are still working to determine how many additional judges are needed. Chief ALJ/Chief Executive Roldan responded that they were.

Member Figueroa asked where they are with the hiring in terms of furloughs and do they have to ask for exemption on that.

Chair Garcia responded that they have already asked the Agency regarding how we are expected to operate under the Governor's Emergency Proclamation and what that means for CUIAB in terms of workload and working around that furlough. She stated that they are waiting for a response regarding that issue and until a response is received through the Labor Agency they are assuming they are still operating under the orders of the furlough.

Member Figueroa asked if a letter was sent on behalf the Board, or how are they working on that. She commented that almost on a weekly basis you see the criticism that CUIAB is not up to speed and in all fairness the world should know that they are doing everything they can but their hands are tied. Also, it behooves the Governor and the Administration of the State of California to do everything to assist us. She stated that it is not over simplifying it but a lot of this is just common sense. How is our staff going to be able to work, how is the Chair going to provide the leadership needed if our hands are tied and they are making us an exemption in terms of criticizing that we are not doing our work but there are not making an exception to assist us.

Chair Garcia agreed that it is all common sense and stated that she has initiated the request to the Labor Agency because the Emergency Proclamation was new to us. She stated that they are waiting for a response on that and asked whether the Board wants to take additional action depending on what the response is.

Member Figueroa asked the Chair if she did it as an individual or does she need an action by the Board.

Chair Garcia responded that she asked as the Chair representing the Board and that she asked, through the Executive Director, and through the Labor Agency,

since we operate under the Labor Agency. She stated that there are other extenuating circumstances out there. We still have Units that are negotiating, the Legislature that has not taken action on the furlough, an election is coming up in a few days, the May Revise is coming out in a few days, a budget discussion is happening in the Legislature in a couple of weeks, so all of those things will be factors but she believes it is their responsibility as a Board to ask because they still have to be responsive to the employees. She commented that they still have to let the Governor's Office know they are asking us to do all this so please tell us how you expect it to get done.

Member Richardson asked for clarification if Chair Garcia asked the Labor Agency or the Governor's Office.

Chair Garcia responded that she has asked the Labor Agency through the Executive Director. She stated that asking directly to the Labor Agency how we as an Agency operate under the Emergency Proclamation of the Governor. There are other issues within that Proclamation, not just the furloughs. There are purchasing of items, how fast we can fast track personnel hiring. When they say "fast track" what does that mean. She stated it was a general ask about all of those areas and that is why it was important to say let's break this up into separate pieces so that we can look at every element that needs to go into our Agency. It is not as simple as saying now we have an emergency order let's go out and hire all these people or let's go out and spend all this money. She stated that a Proclamation is different than an Executive Order or Legislation.

Member Figueroa commented that it appears to her that the Board and the staff are caught between a rock and a hard place, between Federal and State. She stated that we all want to do the good, provide service to the constituency and the State of California, but people don't realize that we are stuck. We want to be the good service provider but we have to understand what the rules are going to be.

Member Richardson asked the Acting Executive Director Flagg if she sent the letter to LWDA.

Acting Executive Director Flagg responded that she sent an email and copied the Chair. She stated that the Chair reviewed the email before it was sent and that they have not heard back yet.

Member Richardson asked when the email went out.

Chair Garcia responded about a week ago.

Member Richardson asked if it was basically how the CUIAB is expected to respond to the Proclamation and work within the Proclamation.

Acting Executive Director Flagg responded yes, as well as an exemption to the furlough.

Member Richardson reiterated we did ask for an exemption to the furlough.

Acting Executive Director Flagg commented we did so a week ago, in context that is correct. In context of the most recently issued Governor's Emergency Proclamation that said that we are to try and do all these things and we were asking for clarification, essentially, how is it that we are asked to be doing these things and is this separate from the furlough because we need some guidance and can we receive an exemption from the furlough in order to be able to advance what the Governor's Emergency Proclamation is asking us to do. She stated that they have not heard back yet and the Chair was copied on that.

Member Richardson inquired if we should send our exemption directly to the Governor's Office versus LWDA.

Acting Executive Director Flagg responded that we cannot do that, we have to send through the Labor Agency.

Member Richardson asked if the Labor Agency then forwards it to the Governor's Office.

Acting Executive Director Flagg stated that was correct.

Member Montañez questioned that we do not have direct communication with the Governor's Office.

Acting Executive Director Flagg responded that was correct.

Member Figueroa commented but we have to adhere to the Proclamation and that that does not make any sense.

Acting Executive Director Flagg responded it was because we are under the umbrella of the Labor and Workforce Development Agency.

Member Richardson commented that we have always been quasi judicial, independent agency.

Chair Garcia responded that we fall under the budget of EDD, under the Labor umbrella.

Member Figueroa stated that we need to get some clarification but if legislation is needed we might have to change the way this agency works because this is a prime example how difficult it is to provide service to the constituents of the State of California when we have two parent agencies.

Member Richardson commented that that is what we are charged with and our duty is to serve the public.

Member Figueroa stated that we could probably cite hundreds of different obstacles that this agency has had. She stated that this is an excellent opportunity to immediately investigate on how we must change the structure.

Chair Garcia responded that we probably have 1,000 examples, but the first thing that needs to be done is to wait until they hear back through the protocol that has been established already. She asked the legal counsel to explain why they have to go through the Labor Agency.

Chief Counsel Hilton responded that under the statutes, the Government Code, the Labor Agency has oversight responsibility for the CUIAB. The only area in which they cannot exercise oversight is with regard to the exercise of your judicial, or quasi judicial, function.

Member Figueroa stated that she understands that, but she does not think the State of California understands that, how separate and independent we are.

Chair Garcia stated that you are seeing in the courts today some challenges from some agencies that receive funding in different areas or have identified special needs within their agency. She stated that as the Chair it is her responsibility to make the Ask and that is what they have done. They will wait to hear from them. Hopefully by the next Board meeting they will have something to report but she believes that since they are asking staff to do all of these things over the next year under the emergency umbrella, we need to be able to go back to them and say, we have asked and this is what they have told us, these are the parameters and so that is where we are.

Member Figueroa thanked the Chair for taking that leadership and added that she thinks that if an email doesn't receive a response in a week, we should send a registered letter to show the urgency of the matter.

Member Richardson commented that is particularly so because we have 90,000 cases with Phase One and Phase Two going full bore and the Administrative staff is working diligently to process all of this, and everybody is onboard with training. Member Richardson thanked all the staff, but the bottom line is that we are at 90,000 cases now even with our most current hiring pushes. It is urgent that we stay on top of hiring and processing the cases because that basically is what we are charged with, deciding these cases, giving the claimants, employers and users of the system prompt adjudication. Our hands should not be tied with respect to that. She asked if there was a problem with the Goard having a copy of the letter that went over to Labor Agency.

Chair Garcia responded sure.

Acting Executive Director Flagg commented that it was an email, it wasn't a letter.

Member Montañez commented that there are people on the Board who are direct appointees of the administration. She stated that it is done in a way that the Governor has the ability to appoint the Executive Director for the agency, that it has been since February, and she thinks that we have to be more aggressive and much more consistent with asking for this exemption because we could show that our open cases are at 90,000; our verifications continue to exceed our dispositions; we have our people working as many hours as we possibly can and we still are falling behind and we have to make that case very strong. We are trying everything we can do and unless we get this exemption from the furloughs or we continue to hire more people we are not going to be able to meet the Governor's Proclamation because people are trying as hard as they can. An email is a good start but the conversations have to be direct and there is no reason why we cannot call the head of the Labor Agency and get responses from them.

Acting Executive Director Flagg responded that she had.

Member Montañez stated that the Acting Executive Director has the authority and she hopes they do not get stuck in bureaucracies but that they use the ability that they have to get answers from the people who are making this decision.

Chair Garcia commented, in defense of the previous Chair, the staff and the Executive Director, that a few months ago when the furloughs first came down they created a furlough committee that involved the staff at the various field offices, the management team, and they were meeting two or three times a week. She was a member of that committee and they looked at putting in an exemption request, they went through that entire process that took a couple of months and they were still told no. At the end of the day it is still the Governor's decision and we are still working through our parent agency, the Labor Agency. We have identified all of our needs, all of EDD's needs and they went through that long process which is not just a simple letter. It was very much a detailed process that went into it that involved identifying the specific needs at each level, from field to appellate to support staff; security needs etc. and potential hires. She stated that this time around they are starting again from scratch and that means they are starting the entire process again from the general Ask to the Labor Agency to if needed going through a formal process, but at the end of the day it is still at the Governor's office, they are the ones that make the final decision. She stated that right now what they have been doing, part of this whole budget process and subcommittee process, is to really identifying everything one of those needs. It is not just 90,000 cases, it is about the workload for the ALJs, how quickly we saw through this budget process, how long it takes us to hire people, vetting them out, putting them in the right categories, and then meeting the challenges of the existing workforce. When you are offering someone a job and you are telling them we are not sure how long we can hire you, those present additional challenges. She stated that doing the Ask, starting that process, is what they started to do. She is certain that they will probably get to the point that they are working their way through that entire process again but she is keeping mindful that they have to work with the

Labor Agency, we are funded under a certain formula, and that at the end of the day it is going to be the Governor and the Labor Agency's joint decision.

Member Richardson stated that she believed the whole board is mindful of that and in no way were they being critical of the former of Chair or the furlough committee. The Board's position is that this is an urgent situation and that time is of the essence, versus let's start over and create the wheel and let it roll for the next six months and then have them close the door in our face for whatever reason. Because time is of the essence this is a Board that needs to act almost in extraordinary session as the legislature does and meet and confer with each other and talk with the stake holders, those people who are in the trenches everyday and see what it is what we can do to provide them the tools they need to solve this backlog, the tools they need to meet the needs of the California users of this system and also, to honor the wishes of the Governor and his administration. They have to take action and it is not a question of sit and wait, and if for whatever reason we are told no, then we are told no but we tried and the public needs to know that we are out there trying for them. That is the duty of this board.

Chair Garcia agreed and stated that is why they are having the special meeting today, having the subcommittees, why they have already done the Ask, why senior staff has identified how to spend every available penny and that they are maximizing every available tool. They are moving in that direction and this board understands that it is not just an Emergency Proclamation but there are some things that go along with that. Hopefully, by the next meeting we will have a response but if not then it is at the pleasure of the Board as to what they want to do from there.

Member Runner asked if there were other agencies that have already been exempt from the furloughs.

Acting Executive Director Flagg responded that as far as she knows the State Compensation Insurance Fund recently had a court decision that said that they had some loop-hole, that made their argument valid and that is because where they get their money from. She stated that they are not liable to the Governor's furlough. It is her understanding that a final decision had not been made.

Member Runner commented that CUIAB may have some of those same stipulations as well, such as where our funding comes from and it doesn't necessarily come from the State.

Acting Executive Director Flagg stated that up until this point the Governor's office has said no one is exempt from the furloughs, including constitutional officers and their departments.

Member Richardson stated that we are looking for a legitimate reason to be exempt and she does not know if this Board has explored every opportunity, but

that is what they want, a legitimate reason for being exempted and she thinks they have one.

Chief ALJ/Chief Executive Roldan stated that they have spent a lot of time discussing the furlough and certainly if it were to be removed from the department the pure numbers say that it would help because they wouldn't be disabled from two days of productivity out of the month with every employee that is subject to being furloughed. One of the expenditures that staff is involved in is upgrading the training room because they are processing and bringing in so many new ALJs, and even if we were not subject to the furloughs we would have a responsibility of bringing on additional ALJs to deal with workload. So the furlough is not the only barrier to our success, the numbers coming in have nothing to do with the fact that the State has been subject to the furlough. We are training the largest ever class starting in the next cycle, 19 new ALJs. ALJ Lillian Waters has done a fabulous job of increasing the scale. As an example, in the past generally there was ceiling of about 5 or 6 ALJs in any particular class and the gaps between the classes were much larger. They are now training a much larger group of attorneys to be ALJs, they are training them in faster cycles so that they are in and out to their offices to process cases more quickly. With Rafael Placentia, Lillian Waters and Jeannette Perez working on these issues, they have really done a good job of coming up with a good model of proposing to improve the training room and that is going to be put into place pretty quickly. There are positives that they have accomplished and certainly the furlough is a matter that has caused a lot of consternation and affects morale, but at the same time people are stepping up and developing a model that is really helping them do a much better job with the resources they have now. We're subject to an order of government, we are respecting that and people are doing what they can under those limitations, but we are also doing a lot of positive things as well. He stated he did not want to end on a bad note with the discussion of the workload action plan because there has been a lot of productivity in that area regardless of the fact that they are subject to the furlough.

Member Richardson commended everyone in the agency for stepping up.

Member Montañez asked when they expect to have the Phase Two hires all onboard and trained.

Chief ALJ/Chief Executive Roldan responded that they have set a goal of June 30 within this fiscal cycle. He is optimistic and that the bigger struggle is on the support staff side. He is certain that they are going to meet the goal in terms of ALJs. They saw in Phase One and Phase Two that hiring PIs at the support staff level was a little bit more problematic than hiring ALJs because the ALJs tend to come in from outside of State service, but the support staff ranks tend to be filled with people who experience in other State agencies so when someone is in a permanent fulltime position and you offer them a promotion opportunity but it is a permanent intermittent promotion opportunity they may not necessarily bite on that transition whereas an attorney who may be shuttering his or her legal practice or transitioning from a city or county government position because they have enough

years for retirement, but they would like to supplement for a few years, the PI ranks have actually been a fairly attractive opportunity for those people who want to work five or six more years. But generally support staff want a career, a livelihood that is going to sustain them so that has made it more challenging to recruit in that area. He stated that there is a proposal that has been submitted proposing to add additional permanent fulltime positions. That is going to take longer than they have in Phase Two but he is hoping that at least in some point in Phase Three the positions will become available so that persons who are being hired as permanent intermittent can transition, they can apply and at least see that there is going to be potential long-term opportunities. He stated that they discuss with all of the hires that they are taking a risk by coming onboard as a permanent intermittent but they also talked about what they are trying to do in terms of that, at least making positions for the long haul. Not all of them are going to cross over and they are very frank with the applicants during the hiring process. They provide the information sheets regarding what exactly is a permanent intermittent position. They do not want people coming in not being fully aware of the benefits and risks of being in those positions.

Member Montañez commended everyone for their work on getting the ALJs on board and asked what the expectation is for Phase Three, with 60 new judges and support staff, to actually start meeting Federal time lapse and case aging standards.

Chief ALJ/Chief Executive Roldan stated that he would never suggest that those standards are out the door. Every effort is being made and while they are not necessarily meeting those standards they are always making an effort on delivering the decisions in as timely a fashion as possible. So projects like the Dragon Naturally Speaking where they transitioning a number of ALJs into that and reducing an 11 day loss of productivity into the Hub are helping the time lapse standards. Realistically, until they start getting the numbers under about 50,000 open cases in any given time, we are not going to be in the position to meet the ideal standards where they're hitting on all cylinders and pleasing the Department of Labor. DOL certainly expressed concern but they also recognize the limitations that CUIAB is working under, and that priority at this point is to just get to the cases. If the projections play out, if they do the Phase Three hiring, if they generally succeed with the hiring, which is going to be a proposal of having all of those new positions hired by October 2009 which would be the ideal, they potentially could wrestle things down to a reasonable number by late 2010, things would be looking better and potentially by 2011, they would be at a point where they can have consistently a workload of under 35,000 open cases at any given time and fully meet time lapse standards of every case that is handled. It is not something that is going to happen right around the corner and it would be ridiculous to paint this rosy optimistic position that just because we hire the people by October, that by summer of next year we are going to meet the standard. We made projections on an earlier model where we didn't fully anticipate the workload that we were going to be dealing with that suggested that we might be able to meet

that level of cases where we could meet time lapse standards by summer of next year, but honestly that is out the door. It is just not going to happen.

Member Richardson asked if they were going to advertise for Phase Three within the next couple of months.

Chief ALJ/Chief Executive Roldan responded that he is not going to do anything until the board tells him he can. We have the model in place and that is going to be a proposal that he thinks they will be taking up in one of the emergency board meetings that the Chair has been calling. We have pulled together the operational information that suggested it is needed and we will present that to the Board in a timely fashion so that it can be acted upon, but certainly the board has to authorize those positions. Beyond just saying this is what the numbers are that we need from a personnel standpoint, Personnel has been working on the specific numbers so that they know exactly how much it is going to cost from beginning to end, just as they did with Phase One and Phase Two proposals. They will give a concrete presentation to the Board so that they will understand exactly what they are making a decision on.

Member Richardson asked if there was any reason why they could not start Phase Three in May or June, start advertising.

Chief ALJ/Chief Executive Roldan replied that they are closing out Phase Two and the most effective thing from an operational standpoint would be to fully focus our energy just like they did with Phase One. Phase One transitioned into Phase Two and it was done in an orderly operational fashion.

Member Richardson questioned if Phase One was completed before starting of Phase Two.

Chief ALJ/Chief Executive Roldan responded that there was a little bit of an overlap but it was minor. We still have a significant amount of work to get done under Phase Two as opposed to Phase One which was over a longer arc and there was a lot less to be done when the Board authorized Phase Two.

Member Richardson asked how many judges there were left to hire on Phase Two.

Chief ALJ/Chief Executive Roldan replied that the Board authorized 40 and he believes he has already made final approval on about 22 or 23. They are at a point where they are creating something of a bottleneck where they are being successful in bringing on the ALJs but they haven't integrated into the process the support staff. It would be worthwhile to focus the energy on having the PALJs work with LSS staff once they are done processing the ALJs. Then they will turn their energies and be part of the hiring process for support staff rather than having a split track of the PALJs work on the ALJs and the LSS work on the support staff. Once the PALJs are done with the ALJs they have to go full bore on helping the support staff leadership help with finishing out the support staff hiring. It would

make more sense to say now that June 30th has come and gone, here is Phase Three but not overlap them.

Chair Garcia commented that another challenge that they have identified along the way is the backlog in the Hub. They as a Board took some action a few meetings back that helped fast track some of the hiring. There were lessons learned along the way that will help them get Phase Three up and running quickly with the support staff.

Acting Presiding Judge, Appellate Operations (AO), Jorge Carrillo reported that when the Board authorized Field Operations to hire 10 new judges as part of the 2008/09 budget and an additional 20 ALJs as part of Phase One, that meant that there were 30 new ALJ positions in the field and as a result of the initial FO hiring Appellate Operations would need 2 ALJs to meet the increased workload with the new hires in the field. The Board approved that and AO has hired 2 ALJs as permanent intermittent and they are both on board now and being trained, Kelly Van Camp and Peri DeMarc, and they hired 2 support staff to go with that. They have completed their Phase One hiring. For Phase Two, the FO was authorized to hire 40 judges and as a result of that it was projected that AO would need 5 ALJs, permanent intermittent, and 5 support staff. They put that in the call letters for 2009/10 because the thought was that the field would be hiring beginning in March, April and May; and the production from those new hires would be felt in AO later in the summer, most likely in September. They were looking at hiring 5 judges beginning in July with the next fiscal budget. They are going to be asking to hire 2 of those judges before the end of the fiscal year because concern that if there is a budget stalemate things could drag on for 3 or 4 months to the point where if they didn't hire before the end of June, the soonest they might be able to hire thereafter is probably in September and it takes AO two to three months to train a new judge, so they wouldn't be productive until December and by that time AO will have felt the increased production from the 40 ALJs that FO is currently hiring. He is going to be asking as part of the 2008/09 budget to hire 2 more permanent intermittent judges and 2 permanent intermittent support staff. In addition, he will have one position he will be able to hire as he currently is in the Acting PALJ position and would be able to fill in behind the ALJ position he holds should the Board select him as the next Deputy. If he returns to his ALJ II position then he becomes a productive ALJ. AO would end up with 3 judges at the end of June. With those 3 Acting Presiding Judge Carrillo feels comfortable that AO would be able to handle increased workload that AO will see from FO's Phase One and Phase Two hires, at least through September. In addition, if FO does hire 60 ALJs, AO would have to hire a total of 15 ALJs and 15 support staff and that is what has been put into the call letters for next year.

Member Richardson thanked and acknowledged Acting PALJ Carrillo for all of the efficiencies that he has created in AO since he has undertaken the position as the Acting Chief and stated that he has done a wonderful job and she has never seen anything run more efficiently.

Deputy Director Pam Boston reported that in all the hiring being done in FO and AO they are starting to look at Administrative Services to see where they may need to augment their staff. They did have a position that they were recruiting for, an Associate Business Management Analyst, which was one of the facilities representatives, and that position was a permanent intermittent but they did not get any interest in it because it was a permanent intermittent. Chief ALJ/Chief Executive Roldan loaned her one of FO's vacant fulltime positions so they will be able to recruit at a permanent fulltime level for that position, which will help in CUIAB's facilities searches and getting all of its facilities in place. In 2008/09 they have requested to hire a permanent intermittent Personnel Specialist, those are the individuals that do pay and benefits. Staff in their transactions unit has really had a major increase in workload because of all the new hires. They are looking to hire another individual to help out in that area. The Board approved in the second workload reduction another buyer which they are recruiting for that person right now as an Office Tech. Lastly, Kathy Carel has decided to accept a position at Franchise Tax Board and her last day is May 22; and Francis Aguilar upped her retirement date and her last day with CUIAB is May 29. She stated that they are recruiting to fill at least one of those positions right now and are looking at what to do with the other one, but they definitely need to get the Personnel Officer in place right away.

Chair Garcia thanked Kathy Carel and Francis Aguilar for their service and dedication.

Member Figueroa commented that she is concerned about how many people are leaving the agency because we are trying to hire and we also have a lot of people going into retirement. They had talked about it as a Board sometime ago about the possibility of doing exit interviews to just get a sense of why people are leaving and what they could have done better, or just to get a sense of how we could assist them if they are retiring. The Board also considered about a year ago the possibility of getting evaluations from staff of how they feel the work environment is, and she thinks there was a lot of concern about who will read these evaluations. They could be sent directly to the Board and that the Board could have some time after their meetings to review what people are saying.

Chair Garcia commented that they should revisit it and certainly going forward they should take a look at how they handle that because as the staff is identified it is not just people who leave the agency, it is people coming in that are reluctant too. She stated that she thinks a lot has to do with stability of the state, whether there are permanent opportunities here or career ladder that makes sense for them or their family. She suggested that the Chief Counsel and her sit down and review the minutes to evaluate that to see how best they could do something like that.

Deputy Director Boston commented that a year ago they talked about doing an Employee Satisfaction Survey. She stated that they can take a look at where that is because she thinks the former P & PM started working on that but she is not sure where it ended up.

Member Richardson stated that she thinks they tabled it but did not know why.

Deputy Director Boston stated that she would do some checking into that and report at the next Board meeting. At one time they did talk about the exit interview but that was another one of those projects that got scraped. Within Admin Services they had worked on developing an exit interview and the process it could go through and she would be glad to resurrect that again.

Chair Garcia suggested that they take a look at what other agencies are doing or what are the best practices.

Deputy Director Boston responded that they did that and looked at a lot of departments and got some good samples. She stated that they have one in place but it never got implemented.

Member Richardson commented that because Kathy Carel and Francis Aguilar are such valuable partners in the Admin Department, she would agree with Member Figueroa and concur and make a motion to conduct board exit interviews with the senior staff that are leaving in the near future.

Chair Garcia commented that she was not sure if board interviews were appropriate but she does want what was established and looked at as best practices and as the new Chair she should know what was done last year. She stated that herself, Chief Counsel Hilton and Deputy Director Boston could get together and take a look at that and then report back to the board on how best to proceed.

Member Figueroa clarified that she did not mean that the Board members would do the interview, just that she would like the Board to be able to see them.

Member Richardson requested that they start with Kathy Carel and Francis Aguilar because they are obviously instrumental and invaluable in handling Admin Services.

Chair Garcia commented that she is aware that there was a lot of work on IT this month as they focus on the impact of adding all the new employees, she knows that the IT teams has put a lot of time into taking a look at the hardware and the software, the daily tools like Blackberries and laptops and all of the new demands put on IT by going paperless, being timely, curbing the appeal time by using technology in a way that makes sense. She thanked Rafael Placentia, CIO, and his staff for all the work that they have done and for identifying those little niches that need to be addressed.

Travel Payment Reimbursement

Chair Garcia stated that the Board had before them some of the audit findings regarding the state audit that was done in November 2008, including some of the expenditures of the former Chief ALJ/Chief Executive. She stated she was not sure the Board members had a chance to review each of the items individually or if they need more time to consider them but she made a recommendation as the Chair. The audit findings asked that the Board review a 10 year period. Because of the way the state keeps records they only have 3 years available to them. Some of those records were incomplete, and it was impossible to recreate some of that information, some of the staffers that were involved are now retired or no longer with the agency so it is impossible to get an accurate picture just based on incomplete documentation. She made the recommendation that they ask the person that was involved in this case to perhaps try to recreate some of that information for them. She stated it would be premature to seek reimbursement or pursue any other kind of action without asking the involved party to take a look at it himself to see if he can recall any of the information before the Board takes any other action.

Member Figueroa stated she thinks that is a wise suggestion because the person needs to be able to recall from memory exactly what occurred and have an opportunity to defend himself on the interpretation of maybe violations of some of these codes. She stated she would like to get the feedback also.

Member Richardson stated that she concurred. She stated that this was the first time she looked at the document today and that she would appreciate the Chair's postponement of the issues so that she can study the items that are going to be sought for reimbursement. She also wants the supporting documentation. She trusts the accuracy of the grid, but it is incomplete in the information it was providing her. It would be imprudent for the Board to make a decision based on distilled information as opposed to looking at the actual travel documents.

Chair Garcia stated that what they will do is ask the party that is involved here to provide some back up information. When we have a complete picture, we have will it back to our staff to analyze and provide a full packet to the Board before taking any action on it.

Member Richardson asked for a full packet well in advance of the Board making a decision so that it can be studied as opposed to waiting until the Board meeting.

Chair Garcia concurred. She asked Chief Counsel Hilton if it was not inappropriate if 60 days would be sufficient time for the party to get his records, have it back to us and then take an audit look at it again, give our staff sufficient time to review it and make copies for the Board. She asked if 60 days would be sufficient.

Chief Counsel Hilton responded that would be sufficient, if it is 60 days from the point in time at which the information is actually provided. Not only this would this

information need to be provided but also an actual copy of the travel documents. He stated that 60 days from the point in time at which he has those documents before him should be enough.

Chair Garcia wanted to establish a time line so she set 60 days and no later than July 15th to give staff enough time to make the copies, get the entire backup from all the involved agencies, and postpone this to the August Board meeting.

Member Richardson made the motion and Member Plescia second. The motion passed unanimously.

Member Richardson stated a little bit of legal information from our Counsel as to who has the burden of proof with respect to the propriety of these expenses would be helpful at his convenience over the next 30 days.

Acting Executive Director Flagg stated that she needed to remind the Board members that the BSA audit report did recommend to CUIAB that it look into previous Chief ALJ's travel and seek reimbursement if it found something that was inconsistent with the best interests of the State. She stated that we responded in writing that we would.

Member Richardson stated that we responded that we would do a lot of things with respect to the BSA recommendation. She stated that the Board is cognizant of what BSA recommended.

Acting Executive Director Flagg commented that we have followed through on every ...

Member Richardson stated that she very much embraced their recommendations.

Acting Executive Director Flagg stated that they have followed through on everything so far that we have told BAS that we would do.

Member Richardson stated they embrace those recommendations.

Chair Garcia stated for the sake of clarifying that, she thinks that by asking for the information we are already complying with it and by verifying it before we use any other resource either to pursue reimbursement or to say that the expenditures were appropriate. The BSA report also cited some other things and it was to strengthen our travel policy which we had done. Now the process requires that the supervisor sign off, that they review the travel claims before it is expended, so we have some of those practices in place now. The Appeals Board is looking at and completing what they need to do regarding the prior employees. The Appeals Board has also implemented some policies regarding the parking spaces which was also a part of findings and that has been addressed in some of the field offices. One of the open items from previous Board meetings has been what are we doing regarding these findings, and this was the last remaining piece. It is in

this Agency's best interest in terms of the use of our resources and to be fair to staff that are no longer here, that they have sufficient time and that we as a board have sufficient time to review all the information.

Member Richardson commented that the BSA report has within it a recommendation on how to deal with the nepotism issue and she thinks that that will probably be covered at the next Board meeting. She stated that she thinks that they have not responded completely to all BSA recommendations.

Chair Garcia responded that they have. There was one open item which was asking for administrative...

Acting Executive Director Flagg responded, referring to the regulatory remedy through the Office of Administrative Law for two policies. Policy #6 which is the nepotism policy, and Policy #24 which the Board adopted preventing Board members from taking employment with the CUIAB for a year after they leave the Board. She stated that they have already submitted the paperwork to the Office of Administrative Law, we are in the queue actually for regulatory action. She stated that last time she reported on this in the March Board meeting she said that she was waiting for DPA to respond, to weigh in on whether or not we should continue to seek regulatory remedy and we have had a meeting with them. They only came back with a partial response for the nepotism policy but they are still trying to educate us on their take on whether or not we should pursue regulatory policy with respect to both. Ultimately, it will be the Board's decision but we are in the queue for Office of Administrative Law and BSA is aware of that.

Member Richardson stated that we have been in the queue, we gave our self a place holder which is what everybody does.

Acting Executive Director Flagg responded correct.

Member Richardson commented that that doesn't mean we are pursuing the regulations.

Acting Executive Director Flagg commented but we haven't missed the opportunity.

Member Richardson responded correct and that she understands the semantics of this situation. She stated that one of the BSA recommendations was that we not ask new staff whether or not they are related to anybody in the agency and she understands that we responded by saying we would no longer do that, but that we are still doing that. She asked if that was correct.

Acting Executive Director Flagg responded by asking which part of the question did she want answered first., the first half or the second.

Member Richardson responded any part she wants.

Acting Executive Director Flagg stated that we continue to ask, yes.

Member Richardson commented that she made a representation in her letter to the BSA we would not do that any longer.

Acting Executive Director Flagg responded that she does not have that in front of her so she will have to review it.

Chair Garcia commented that she did not know what letter she was talking about.

Member Richardson replied the one that is attached to the BSA audit. She asked if Acting Executive Director Flagg knew which one she was referring to.

Acting Executive Director Flagg stated that she did and that she did not have it in front of her so she did not know how they responded specifically. She asked if Member Richardson had it in front of her.

Member Richardson responded that she did at the last board meeting but I guess...

Acting Executive Director Flagg stated for her to resurrect it.

Member Richardson stated no she was not going to resurrect it, she was just giving Acting Executive Director Flagg the opportunity to read what she wrote.

Acting Executive Director Flagg commented that if she had it she was welcome to read it.

Member Richardson responded no, (sic) next board meeting.

Chair Garcia commented, why don't they address it at another Board meeting and as it is right now she knows that we are in the queue and she knows we are having some discussions regarding how we handle that issue and she thinks it is appropriate that perhaps we maybe have conversation either specifically with that item on the next Board agenda or closed session, however our legal counsel thinks is appropriate, but I don't think we are going to do this back and forth thing so let's end that right there.

Member Richardson commented it doesn't help.

Chair Garcia stated that being said since we are done with that issue we are moving on to item 5, Public Comments.

5. Public Comment:

There was no Public Comment.

6. Closed Session:

The regularly scheduled Board meeting adjourned.

7. Closed Session:

No votes were reported.

Adjournment